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Exempt from fees per Gov't Code § 6103
To the benefit of the City of San Diego

Attorneys for Defendants
SAN DIEGO POLICE DEPARTMENT, SHARON MCFALLS,
EDUARDO LOPEZ, DAVID VALDEZ, and MICHAEL MORAN,

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

THOMAS NGUYEN,	) Case No. 2011-CV-2594 (WQH) NLS
)
	) DEFENDANTS SAN DIEGO POLICE
	) DEPARTMENT, SHARON MCFALLS,
Plaintiff,	) EDUARDO LOPEZ, DAVID VALDEZ
	) AND MICHAEL MORAN'S NOTICE OF
	) MOTION AND MOTION FOR FULL OR
v.	) PARTIAL SUMMARY JUDGMENT
)
	) NO ORAL ARGUMENT UNLESS
	) REQUESTED BY THE COURT
)
SAN DIEGO POLICE DEPT., OFFICERS)
MCFALLS (#4473), LOPEZ, (#6654),)
VALDEZ (#6562), MICHAEL MORAN)
(#5700),	) I/C Judge: Hon. William Q. Hayes
	) Date: January 28, 2013
	) Time: 11:00 a.m.
Defendants,	) Ctrm: 14
	) Complaint filed: September 22, 2011
	) Trial: Not yet set
)
)

TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on January 28, 2013 at 11:00 a.m., or as soon thereafter as counsel may be heard in Courtroom 14B of the Honorable William Q. Hayes, Judge, in the above-entitled court, located at 333 W. Broadway, San Diego, California, Defendants, SAN DIEGO POLICE DEPARTMENT, SHARON MCFALLS, EDUARDO LOPEZ, DAVID VALDEZ and MICHAEL MORAN, by and through their attorney of record, Kathy J. Steinman, will move the Court pursuant to Federal Rule of Civil Procedure Rule 56 to grant this Motion for Full or Partial Summary Judgment.

1 The grounds for this motion are that the facts do not support, as a matter of law, a
 2 constitutional violation of the U.S. Constitution or the California Constitution, thereby vitiating
 3 Plaintiff's first cause of action for "Civil Rights" and related state causes of action, and that
 4 thereby the remaining state causes of action must fail, that immunities require the dismissal of
 5 Plaintiff's lawsuit in whole or in part. Furthermore, as a matter of law, there is no triable issue of
 6 genuine material fact relative to Plaintiff's causes of action, and therefore, they should be
 7 dismissed.

8 Defendants move for summary judgment on the basis that Plaintiff's detention was made
 9 pursuant to probable cause and was reasonable under the circumstances and, as a consequence,
 10 did not violate the Fourth Amendment standards for search or seizure or the Fourteenth
 11 Amendment's equal protection clause, nor did it violate Plaintiff's First Amendment rights.
 12 Moreover, regardless of whether or not a constitutional violation occurred, the right in question
 13 was not clearly established in the Ninth Circuit at the time and, therefore, a finding of qualified
 14 immunity on behalf of the Defendant Officers is required. As to plaintiff's state law claims,
 15 plaintiff cannot prove the required elements against the individual officers.

16 Additionally, there are no allegations that support a single cause of action against the San
 17 Diego Police Department.

18 The Motion is based upon this Notice of Motion and Motion, the Memorandum of Points
 19 and Authorities in support of the Motion, the Declarations in Support of Defendants' Motion, the
 20 List of Evidence and exhibits attached thereto, Plaintiff's Complaint, on file in this Court, any
 21 matters to which the Court may take judicial notice, the orders, pleadings, and papers filed
 22 herein, the pleadings, papers, affidavits, exhibits, deposition transcripts or other documents
 23 lodged concurrently with this motion, and such arguments and evidence as may be presented to
 24 the Court at the time of the hearing and/or any oral argument made on the Motion.

25 Dated: December 19, 2012

JAN I. GOLDSMITH, City Attorney

26 By /s/ Kathy J. Steinman

27 Kathy J. Steinman

28 Deputy City Attorney